BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTINE D. FARMER)
Claimant)
VS.)
) Docket No. 1,003,455
INFINIA AT WICHITA)
Respondent	
and)
DIAMOND INSURANCE CO.)
Insurance Carrier)

ORDER

The respondent and its insurance carrier (respondent) appealed the June 21, 2002, preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

Issues

The claimant suffered a work-related injury on January 31, 2002. She was returned to work with restrictions which the respondent was apparently accommodating until the claimant was terminated for excessive absenteeism. Nevertheless, Judge Barnes granted the claimant's request for temporary total disability compensation (TTD) because the respondent admitted that the claimant always called in and reported her absences, and because she only missed work due to pain associated with her work injury, illness or family emergencies. Accordingly, the ALJ concluded that such absences are not the type which would generally lead to a termination "for cause" and a denial of TTD.

The respondent contends that Judge Barnes exceeded her jurisdiction. The respondent argues that the "for cause" termination is a defense to claimant's claim for TTD.

The respondent also raises an issue as to whether the claimant meets the definition of being temporarily and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1. After reviewing the evidence and considering the arguments, the Appeals Board concludes the issues raised by the respondent are not reviewable at this stage of the proceedings. Therefore, this appeal should be dismissed.
- 2. This is an appeal from a preliminary hearing order. Therefore, not every error in law or fact is subject to review. Generally, preliminary hearing awards can be reviewed only when it is alleged the judge exceeded his or her jurisdiction in granting or denying benefits. Preliminary hearing findings of whether (1) the worker sustained an accidental injury, (2) the injury arose out of and in the course of employment (3) notice was given or claim timely made, or (4) certain defenses apply, are deemed jurisdictional and subject to review from a preliminary hearing order. The Appeals Board has held on numerous occasions that the term "certain defenses" refers to defenses which dispute the compensability of the claim under the Workers Compensation Act.
- 3. The issues raised in this appeal are not one of the jurisdictional issues listed above and the judge did not exceed her jurisdiction. The question presented by the respondent is whether the judge erred in applying the law to a preliminary hearing issue over which the judge had jurisdiction.

WHEREFORE, the Appeals Board dismisses this appeal leaving the June 21, 2002 Order in full force and effect.

IT IS SO ORDERED.

¹ K.S.A. 44-551(b)(2)(A).

² K.S.A. 44-534a.

Dated this	day of November 2002.	
	BOARD MEMBER	

c: J. Scott Gordon, Attorney for Respondent Michael L. Snider, Attorney for Claimant Nelsonna Potts Barnes, Administrative Law Judge Director, Division of Workers Compensation